

The State of South Carolina



Office of the Attorney General

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January 8, 1990

The Honorable John T. Campbell
Secretary of State
State of South Carolina
P. O. Box 11350
Columbia, South Carolina 29211

Dear Mr. Secretary:

As you are aware, your letter of November 29, 1989 to Attorney General Medlock has been referred to me for response. In that letter, you stated your belief that the provisions of Sections 33-15-310(d) and 33-15-310(e) of the 1976 S. C. Code of Laws, as amended, were in conflict. You requested this Office's opinion on the proper procedure to be followed by your office.

A review of Section 33-15-310 indicates that the provisions about which you are apparently concerned are actually found in Sections 33-15-310(e) and 33-15-310(f). Those sections, in pertinent part, provide as follows:

"(e) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State as the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this State."

"(f) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation."

It is an elemental principle of statutory construction that one should "give parts and provisions of a

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legislative enactment effect and reconcile conflicts if reasonably and logically possible." Adams v. Clarendon County School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897, (1978). With that principle in mind, it is the opinion of this Office that any such conflict as may exist between the provisions of subsections (e) and (f) of Section 33-15-310, may be reconciled and full effect can be given to both subsections.

Ordinarily, process, notice or other legal papers are served on the registered agent for a foreign corporation in accordance with Section 15-9-240. An examination of subsection (e) and the Official Comment appended to Section 33-15-310, leads to the conclusion that subsection (e) was enacted simply to provide an alternative method of effecting service on a foreign corporation. As is indicated by the Official Comment, a party having no knowledge of the revocation of the foreign corporation's certificate of authority, and of the statutorily mandated appointment of the Secretary of State as the agent for service of process, may serve the registered agent for the corporation.

Moreover, in view of the limitation of subsection (e) to "causes of action which arose during the time the foreign corporation was authorized to transact business in this State," it is conceivable that, in many cases, litigants may have to resort to the use of the method of service provided by subsection (f). Consequently, the provisions of subsection (e) and (f) would appear to be complementary rather than conflicting.

Based upon the foregoing reasoning, this Office concludes that there does not seem to be a genuine conflict between the provisions of subsections (e) and (f) of Section 33-15-310. Accordingly, pursuant to the provisions of subsection (e), service of process on a foreign corporation whose certificate of authority has been revoked by the Secretary of State, may be made upon the Secretary of State in appropriate cases.

Please let me know if I can be of further assistance to you in this matter.

Very truly yours,

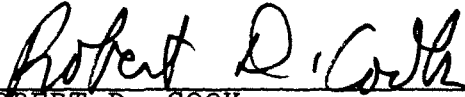


Wilbur E. Johnson
Assistant Attorney General

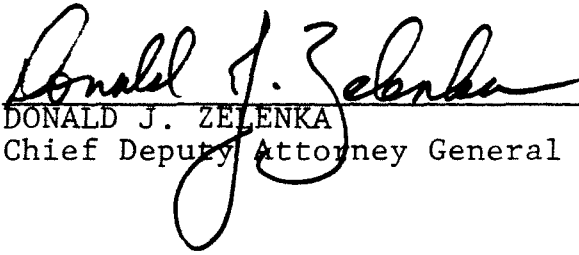
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REVIEWED AND APPROVED BY:



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